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Decision

Matter of: Rockwell Electronic Commerce Corporation

File: B-286201; B-286201.2; B-286201.3

Date: December 14, 2000

Gerard F. Doyle, Esq., and Ron R. Hutchinson, Esq., Doyle & Bachman, for the protester.

Kevin P. Mullen, Esq., Carl L. Vacketta, Esq., and Holly Emrick Svez, Esq., Piper, Marbury, Rudnick & Wolfe, for MCI WorldCom, Inc., the intervenor.
Seth Binstock, Esq., and Jonathan Cantor, Esq., Social Security Administration, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of price evaluation under a solicitation for a contract for telecommunications services is sustained where the solicitation stated that telecommunication costs incurred by the agency outside the price of the contract would be included in the evaluated price, the awardee's proposal was based on a solution that included costs outside the contract but the awardee did not identify these costs in its proposal, the agency did not evaluate these costs, and the protester was prejudiced by this miscalculation.

2. Protest that awardee's proposal for telecommunications services fails to meet various specification requirements is denied where the awardee's proposal indicates that it will comply with or does not take exception to the requirements and the protest is primarily based on the awardee's failure to provide an amount of detail showing its compliance which was not required by the solicitation.

DECISION

Rockwell Electronic Commerce Corporation protests an award to MCI WorldCom, Inc. under request for proposals (RFP) No. SSA-RFP-00-3929, issued by the Social Security Administration (SSA) for network-based services to replace the agency's automatic call distributors (ACD) call answering system.

We sustain the protest.

SSA has approximately 12,000 call center representatives working at 38 call centers nationwide servicing incoming toll-free calls. Agency Report at 1. SSA currently receives incoming toll-free call service from the public under the General Services Administration's (GSA) FTS 2001 contract with MCI (selected by SSA from GSA's available contractors). Id.; RFP amend. 5, at B-2. SSA's current ACD call answering system receives a call from the FTS 2001 contractor and distributes it within SSA. This system consists of government-based equipment that SSA has determined is antiquated and must be replaced. SSA seeks to replace the current system with a network-based services solution that would eliminate existing government-based call distribution equipment and would have SSA acquiring call distribution services via the service provider's own call distribution network external to SSA. Agency Report at 1.

The RFP, issued on October 20, 1999, contemplated the award of a fixed-price contract for a base period with 6 option years (for a total potential contract life of 92 months). RFP amend. 2, at A-1. The competition was conducted under Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items. The technical proposal consisted of "oral presentation materials," which "outline" the offeror's technical approach to meet the RFP's "mandatory specifications," and "discuss" the initial transition plan, initial disaster recovery plan, initial security plan, initial maintenance and repair program plan, and initial training plan. Id. at E-20, E-21. The technical evaluation was to be based on the offeror's technical approach as described during oral presentations and substantiated by information submitted in the technical proposal. Id. at E-26. The RFP stated that award would be made to the offeror whose proposal conforms to the solicitation and represents the best value as determined under the following evaluation factors listed in descending order of importance: (1) price, (2) technical approach to the solution, and (3) past performance. Id.

The evaluation of price is of particular relevance here. The RFP stated that price was to be evaluated based on the total present value price of the following five price categories: (1) initial start-up solution services, (2) recurring services, (3) optional features, items, and support services, (4) monthly facilities costs, (5) FTS 2001 evaluated costs. Id. The total proposed contract price, which does not include FTS 2001 costs, is stated in each offeror's pricing tables A and AA. RFP amend. 7, at A-1 through A-4, A-11 through A-23. The RFP provides for including FTS 2001 costs in each proposal's evaluated price by having each offeror identify and provide costs for the FTS 2001 resources "unique" to its solution in RFP tables H and I.¹ RFP

¹ GSA has protected the out-year prices of MCI's FTS 2001 contract, and thus only the first 2 years of MCI's FTS 2001 prices were available to offerors other than MCI. Hearing Transcript (Tr.) at 33-35. The other offerors were supposed to identify the FTS 2001 resources that their proposed solutions would require and the associated FTS 2001 prices based on the prices published for the first 2 years; it was SSA's

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amend. 7, A-10, A-10A, A-44 through A-46. To the extent FTS 2001 services are used as part of an offeror's proposed solution, they would be paid directly by SSA to the FTS 2001 contractor; FTS 2001 costs, although they were to be considered in the price evaluation, would not be a part of the price of the contract awarded under this RFP.

Because any offeror's proposed solution under the RFP was required to have an initial interface with the FTS 2001 network, SSA will have to incur some FTS 2001 costs regardless of which proposal is accepted under the RFP. In this regard, the RFP's "mandatory specifications" required that the SSA contractor receive incoming toll-free calls from the FTS 2001 network at the SSA contractor's service delivery points (SDP). RFP amend. 5, at B-2. The initial interfaces between MCI's FTS 2001 points of presence (POP) and the SSA contractor's SDPs requires connections which will be unique to each offeror's proposed solution in terms of the number of POP/SDP connections and the distance of those connections. Id.; Tr. at 163-66.

After the initial interface with the FTS 2001 network, the RFP permitted use of FTS 2001 services, but did not require it. The specifications require that, after calls are received at the SSA contractor's SDP, the SSA contractor will provide all equipment and services needed to deliver calls from the SDPs to the earpieces at SSA's call answering locations. RFP amend. 5, at B-2. The call delivery medium for delivering calls from the SDPs to the SSA earpieces is the choice of the SSA contractor; the proposed solution may provide for the contractor's own call delivery medium or it may rely on FTS 2001 network services. Id. In terms of the technology the agency desired and the types of call traffic the proposed solution would be required to handle, the specifications required the following:

SSA is looking for the telecommunications industry to provide their best network-based services solution to handle our toll-free traffic from the FTS 2001 network and the administrative traffic associated with operating inbound call centers.

Id. The RFP estimated the level of toll-free traffic to be approximately 80 million calls for the first contract year, with slight increases in each successive contract year. Id. at B-6. "Administrative traffic" refers to calls made by SSA personnel within a call center, between two or more different call centers, or other local or long distance calls. Tr. at 31-32. Although the RFP stated specific requirements for

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responsibility to determine the total evaluated cost for these services for the 7-year life of the solicited contract. Tr. at 33-38.

administrative traffic,² it did not provide an estimate of the level of that traffic. Tr. at 99.

[DELETED] offerors, including MCI and Rockwell, submitted initial proposals by the February 14, 2000 closing date. Contracting Officer's Statement at 3. Contrary to the agency's expectations, [DELETED] proposals, including MCI's and Rockwell's, did not make extensive use of the FTS 2001 network. Tr. at 57. In fact, [DELETED] proposals, Rockwell's [DELETED], proposed virtual private networks (VPN) that, after the initial interface with the FTS 2001 network, completely avoided FTS 2001 services. Tr. at 236. A pertinent difference between the technical approaches of MCI's and Rockwell's solutions is that MCI proposed using its existing commercial network for its call delivery medium from its SDPs to the SSA earpieces, whereas Rockwell proposed a VPN for its call delivery medium, which provided interconnectivity between the SDPs. Agency's Comments on the Hearing at 3. Thus, while MCI's proposed solution includes some FTS 2001 services unique to its call delivery solution, Rockwell's VPN solution does not require the use of any FTS 2001 services unique to its call delivery solution.

For example, administrative call traffic between two call centers served by two different SDPs is a type of "station-to-station" call required by the solicitation. Tr. at 93-95, 246-64; see, e.g., RFP § B.2.1, Functional Requirements of Call Representative Positions ¶¶ 5, 20, 25, 29 and 33. In MCI's solution, these station-to-station calls would travel from a call center in one SDP using the FTS 2001 network to go to the destination call center in another SDP. Tr. at 230, 236. In Rockwell's solution, all of its SDPs are connected within the VPN, so station-to-station calls need not leave the VPN to be completed. Tr. at 81-82.

The agency evaluated the proposals, established a competitive range of [DELETED] proposals, and met with each offeror to receive oral presentations. Contracting Officer's Statement at 4. The agency subsequently conducted discussions and requested and received final proposal revisions from [DELETED] offerors. Id. The final evaluation gave MCI's and Rockwell's proposals the same ratings of [DELETED] for the technical factor and [DELETED] for the past performance factor. Id. MCI's evaluated price of \$[DELETED] was lowest of all proposals; Rockwell's evaluated price was \$[DELETED]. Id.

The source selection authority accepted the evaluation results and recommendation of the source selection advisory council, and determined that MCI's proposal represented the best value to the government. Agency Report, Tab 124, Source

² See, e.g., RFP § B.2.1, Functional Requirements of Call Representative Positions; Tr. at 246-64.

Selection Decision. On August 23, SSA awarded the contract to MCI. After Rockwell requested and received a debriefing, it filed this protest with our Office.³

Rockwell protests that the price evaluation of MCI's proposal and the resulting best value determination and award to MCI were unreasonable and inconsistent with the terms of the RFP because SSA did not evaluate all of the FTS 2001 costs associated with MCI's proposed solution. We agree and sustain the protest on this basis.

It is fundamental that offerors must be advised of the bases upon which their proposals will be evaluated. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406, B-252406.2, June 25, 1993, 93-1 CPD ¶ 494 at 7. It is also fundamental that the contracting agency must treat all offerors equally, which includes providing a common basis for the preparation and submission of proposals and not disparately evaluating offerors with respect to the same requirements. Id. at 8. In reviewing a protest of an agency's evaluation of proposals, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177 at 5.

Here, the RFP stated that the agency would include those FTS 2001 costs unique to offerors' proposed solutions in the evaluated prices of proposals and that "FTS 2001 evaluated costs" was a price evaluation subfactor. MCI concedes that its proposed solution requires FTS 2001 costs in order for MCI to deliver station-to-station calls between SDPs. Intervenor's Comments on the Hearing at 8; Intervenor's Comments on Supplemental Report at 3, exh. A, Supplemental Declaration of Intervenor's Consultant, at 4; Tr. at 141-42. It is undisputed that MCI did not include these FTS 2001 costs in the FTS 2001 pricing tables in its proposal, and that SSA did not include these costs in the evaluated price of MCI's proposal. Tr. at 142-43; see Intervenor's Comments on Supplemental Report at 3-4, exh. A, Supplemental Declaration of Intervenor's Consultant, at 4-5. It is also undisputed that Rockwell's proposed VPN delivers station-to-station calls between SDPs without using FTS 2001 services, and that Rockwell's proposed and evaluated price includes the cost of connecting the SDPs to make this possible. Tr. at 105-06; see Intervenor's Comments on the Hearing at 8.

The agency and intervenor first contend that evaluation of these FTS 2001 services is not required because they are not "unique" to MCI's proposed solution. This argument is meritless. Given the variant call delivery mediums permitted by the RFP, an offeror's choice of FTS 2001 services as its medium to deliver station-to-station calls between SDPs is unique to a proposed solution. Clearly, as discussed

³ SSA determined that continued performance of the contract during the period of this protest is in the best interest of the government. Agency Report, Tab 128, Justification for Continued Contract Performance.

above, MCI's proposed solution requires FTS 2001 service to deliver this type of call and Rockwell's proposed solution does not. This falls squarely under the agency's definition of "unique to the offeror's proposed solution" with respect to MCI's proposal, see Tr. at 49-53, and thus is an FTS 2001 cost that the RFP required to be included in the evaluated price of a proposal.⁴ RFP amend. 7, at A-10.

SSA and the intervenor also contend that these costs were not, and could not be, evaluated because the RFP did not state an estimated level of administrative call traffic, including the station-to station calls at issue. While this creates some cost identification problems for an offeror that proposes to use FTS 2001 services unique to its solution for delivering this call traffic, an offeror could identify the unit rates applicable to using those FTS 2001 services and the agency could calculate the associated evaluated price during the evaluation. Tr. at 237. We note in this regard that none of the offerors (other than MCI) could identify all FTS 2001 costs where their solutions include such services because they do not have access to the FTS 2001 prices for the out-years, a major portion of the term of the contract; however, the agency contemplated that these offerors would identify the FTS 2001 resources their proposed solutions will use and the agency could evaluate the resulting evaluated prices. Tr. at 33-38. Thus, we think the RFP's failure to estimate the level of administrative call traffic does not pose an insurmountable obstacle to including this real cost to the government in determining the total evaluated price of an offeror who uses FTS 2001 services as its part of its solution for the required station-to-station service. In any case, the terms of the RFP expressly require that the costs of FTS 2001 services unique to an offeror's proposed solution be included in the evaluated price, so we cannot find any reasonable basis for MCI not including these costs (or at least the applicable resources and/or rates) in its proposal or the agency's failure to include such costs in its evaluation.⁵

⁴ The intervenor also alleges that the RFP was amended to state that FTS 2001 transport costs would not be evaluated. Intervenor's Comments on Supplemental Report at 4; RFP amend. 2, Answer to Question 22. However, the RFP was subsequently amended with specific reference to transport charges associated with moving calls between SDPs, stating that "[o]fferors shall calculate all costs associated with delivering a call." RFP amend. 3, Answer to Question 1.

⁵ The agency depicts Rockwell's protest of this issue as an allegation that SSA's price evaluation failed to credit Rockwell's proposed solution for avoidance of FTS 2001 costs, which Rockwell did not identify during the competition, and alleges that this is an untimely challenge of the stated evaluation plan. Agency's Comments on the Hearing at 2, 6. The agency's position presumes a requirement for Rockwell to meet, where no such requirement exists. The RFP evaluation plan states that the evaluated price would include FTS 2001 costs and provides pricing tables for offerors to identify FTS 2001 costs. The RFP does not provide for the identification or evaluation of FTS 2001 costs avoided by a proposed solution. In fact, SSA apparently
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We recognize that a major reason the agency did not evaluate these FTS 2001 costs unique to MCI's solution was related to the agency's assumption, when it issued the RFP, that the prices for FTS 2001 services were unbeatable, so that all offerors would extensively employ services covered by the FTS 2001 contract in their proposed solutions. Tr. at 57, 191-92. Under this scenario, providing administrative call traffic by means of FTS 2001 contract services might not lead to offeror-unique FTS 2001 costs because these costs would then be essentially the same in all solutions. This is apparently what SSA expected, although it never conveyed this to the offerors in the RFP or otherwise, and it appears that SSA was caught off guard when [DELETED] of the offerors, including MCI and Rockwell, did not make wholesale use of the FTS 2001 contract in their proposed solutions; SSA was not prepared to consider, as an additional cost, a contractor-unique solution requiring the use of the FTS 2001 contract to provide administrative call traffic. See Tr. at 57.

Indeed, as explained above, [DELETED] proposals used VPNs, which do not require FTS 2001 services after the initial interface with that network. Tr. at 236. Although the RFP did not specifically request VPN solutions, it clearly permitted them by stating that offerors "can either use their own call delivery medium . . . or use FTS 2001 dedicated access." RFP at B-2. As the RFP was written, the degree to which FTS 2001 costs were unique to a proposed solution depended on the nature of the proposals received, so that when some, but not all, offerors proposed VPNs, the burden and complexity of evaluating unique FTS 2001 costs increased dramatically. Recognizing this difficulty, the contracting officer acknowledges that if an offeror fails to identify FTS 2001 costs in its proposal, the agency cannot know that costs were left out. Tr. at 148-49.

MCI's proposal failed to identify specific FTS 2001 costs and/or resources. The FTS 2001 pricing table H in its proposal identified total FTS 2001 costs, and wrote nothing more than "N/A" on table I, the table for listing unique specific FTS 2001 costs and/or resources. Agency Report, Tab 115, MCI's Final Proposal Revision; RFP amend. 7, at A-10.A. Thus, it would have been difficult for the agency to verify the total FTS 2001 costs claimed in MCI's proposal as reasonable and complete, or otherwise determine the constituent costs required by the proposed approach.

Whatever the reason, the fact remains that the agency did not consider FTS 2001 costs for station-to-station services in determining the offerors' total evaluated prices as required by the solicitation. As noted, the cost of providing station-to-station calls between SDPs was included in Rockwell's proposal and evaluated by SSA; this is not so for MCI's proposal, which employed the FTS 2001 contract to supply these

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recognized this, since it rejected MCI's attempts to quantify claimed costs avoided in the price evaluation. Agency's Comments on Hearing at 2 n.1.

services, but did not include a price for them. The agency's action in failing to evaluate MCI's FTS 2001 costs associated with station-to-station service resulted in treating the offerors unequally and unfairly under the stated evaluation plan, and the price evaluation and resulting source selection decision are unreasonable and inconsistent with the stated evaluation plan.

The agency and intervenor allege that the station-to-station FTS 2001 costs not evaluated by the agency are not material, so that the protester was not prejudiced by the agency's failure to consider these costs in the evaluation.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

In support of the argument that the protester is not prejudiced, the agency, for the first time at the hearing, contended that these costs are not material because the level of station-to-station call traffic is not significant.⁶ Tr. at 71-74. In addition, the intervenor contended at the hearing that a realistic estimate of cost of the station-to-station call traffic under the FTS 2001 contract would be approximately \$700,000 (total cost at present value), and using what the intervenor considered a worst case scenario (*i.e.*, 1 hour of call time per day per person), an assumption that MCI characterizes as "absolutely outlandish," the total present value cost for these services would be \$8.4 million, which is not enough to displace MCI's \$[DELETED] million price advantage. Tr. at 278-84; Intervenor's Comments on Hearing at 8-9, attach. 1, at 1. In response, Rockwell contends that the cost of these services under the FTS 2001 contract could be as much as \$25 million, based on MCI's worst case scenario of 1 hour of station-to-station calls per day per person, because MCI used the wrong FTS 2001 contract rates in making its calculation and Rockwell's calculation is based on higher rates in the FTS 2001 contract that it contends are applicable to this service under MCI's solution. Protester's Comments on Hearing at 9; Protester's Nov. 22, 2000 Submission at 2-3.

We also note that Rockwell asserts that it was prejudiced because it relied on the terms of the RFP, which required offerors to provide the administrative call

⁶ After the hearing was held, the agency stated that it does not collect call detail information and thus does not have a record of the level of station-to-station calls. It further stated that the agency asked managers at the three largest call centers about this type of call activity and the responses indicated that there would be fewer than 12 calls per month. The agency estimates that this will result in about 82,000 minutes per year at a cost, using the higher FTS 2001 rate, of over \$4,000. Agency's Nov. 22, 2000 Submission at 1.

capability, including station-to-station call traffic, and did not state that the cost of that call capability would not be considered in the price evaluation, in preparing its proposal. In this regard, Rockwell proposed a solution that permits station-to-station call capability using a VPN, which it claims represented a \$[DELETED] million incremental cost to its total price. Rockwell states that it would not have proposed the same solution if the RFP had stated that the cost to SSA of a solution using FTS 2001 services for station-to-station call capability was not material or would not be considered in the evaluated price. Protester's Comments on the Hearing at 3-11; Declarations of Rockwell's Vice-President of Engineering and Chief Technical Officer, Oct. 16, 2000, Nov. 6, 2000. Rockwell's quantification has not been challenged.

From the record, we find there is a reasonable possibility that the protester was prejudiced by the agency's failure to evaluate offerors' unique FTS 2001 costs associated with handling station-to-station call traffic. First, Rockwell could potentially have modified its proposed solution, had it known those costs would not be evaluated, enough to affect the source selection. Given that the RFP's stated evaluation scheme is the starting point for the development of proposals, we think it reasonable to accept that offerors, such as Rockwell, may have structured their proposals differently had they known that unique FTS 2001 costs would not be included in the agency's evaluation. See Foundation Health Fed. Servs., Inc.; Humana Military Healthcare Servs., Inc., B-278189.3, B-278189.4, Feb. 4, 1998, 98-2 CPD ¶ 51 at 14-15. As to MCI, we simply cannot definitively determine the extent of the FTS 2001 costs under MCI's proposal on the record before us. We do find that nothing in the pre-award record suggests that the station-to-station call capability was insignificant; to the contrary, the RFP stated that SSA wanted the industry's best network-base services solution to handle SSA's administrative traffic, and repeatedly stated requirements for station-to-station call capability. RFP § B.2.1 ¶¶ 5, 20, 25, 29 and 33; see Tr. at 246-64. Moreover, as indicated, the quantification of station-to-station call traffic and the applicable rate to apply to calculate the resulting FTS 2001 cost under MCI's proposal are vigorously disputed, and MCI's proposal does not identify the specific FTS 2001 service that would be employed to deliver station-to-station calls. Agency Report, Tab 115, MCI's Final Proposal Revision, attach. B, Pricing Note and Pricing Tables, tables H, I. On this record, we conclude that there is a reasonable possibility that, but for SSA's failure to follow the RFP's evaluation criteria, Rockwell would have had a substantial chance of receiving the award. Consequently, we sustain Rockwell's protest concerning the agency's treatment of the FTS 2001 costs.

Turning to the other issues raised, Rockwell alleges that its [DELETED] technical rating should have been higher, that is, [DELETED] because it was improperly downgraded for not having [DELETED], which was not a requirement stated in the RFP. We find no merit to this contention, which is based on Rockwell's comparison of its proposal to another proposal (not MCI's). The evaluation did not treat the [DELETED] feature as a requirement, but as a strength in the solution proposed by

the other offeror. Our review of the record evidences that Rockwell's proposal, which as noted received a [DELETED] rating, was not downgraded for not having this feature. Rather, the agency determined that the evaluated strengths in Rockwell's proposal did not warrant an even higher rating. Also, with respect to MCI, whose proposal also did not propose [DELETED] and was rated [DELETED] under the technical factor, these two offerors were treated the same. In this respect, the protester has presented no basis for its proposal to be rated higher than MCI's.

Rockwell also alleges that MCI's proposal is either technically unacceptable due to non-compliance with various minimum requirements of the RFP, or alternatively those minimum requirements are ambiguous as to what is required.⁷ We have reviewed Rockwell's numerous contentions in this regard and find none that provide a basis to sustain its protest. We note that many of Rockwell's contentions are based on the alleged lack of detail in MCI's technical proposal, which was the result of the agency's use of commercial item procedures pursuant to FAR Part 12. The RFP, prepared using the streamlined process permitted under FAR Part 12, did not contemplate detailed descriptions of the offerors' technical solutions, but only required offerors to "outline" their technical approach with respect to meeting the specifications, and the offerors then presented their technical solutions during oral presentations. For the bulk of the challenged requirements, MCI's proposal indicated that it would comply or did not take exception to the requirements in question, and much of Rockwell's contention regarding MCI's compliance is based on commercial literature not incorporated into MCI's proposal. As illustrated by the following examples, we cannot conclude that the agency improperly determined MCI's proposal was acceptable.

The RFP requires that a backup intelligent network routing (INR) system "shall be capable of becoming the primary system within one (1) second of a failure in the original primary system." RFP § B.2.9.H.4. As Rockwell notes, MCI's oral presentation slides present a simple diagram showing the proposed redundant solution. Agency Report, Tab 13, MCI's Initial Proposal, "MCI WorldCom's Redundant Technical Solution." MCI's proposal did not take exception to the stated 1-second backup requirement and, absent exception taken to it, we think it is not unreasonable for the agency to conclude from the slide that the proposed redundancy can satisfy the requirement. Protester's "proof" to the contrary is based on product literature that was not incorporated into MCI's proposal, and on Rockwell's own experience with a component used by MCI. Since the protester does not identify exceptions to the requirement in MCI's proposal and in the absence of a RFP requirement that the offeror's proposed compliance with each requirement be fully described in every respect, Rockwell's allegations do not render unreasonable

⁷ The alleged ambiguous terms include the non-blocking requirement, requirements to support all 11,124 toll-free answering positions, and the single point of failure requirement.

the agency's determination that MCI's proposal was compliant with this requirement. See GTE Hawaiian Telephone Co., Inc., B-276487.2, June 30, 1997, 97-2 CPD ¶ 21 at 11; Inframetrics, Inc., B-257400, Sept. 30, 1994, 94-2 CPD ¶ 138 at 4.

As another example, the RFP requires:

The solution shall be engineered such that any single point of failure will not adversely affect full call answering functionality for more than 1,200 Call Representative positions and/or 10% of all incoming call attempts.

RFP amend. 5, at B-21 (emphasis added). The RFP elsewhere states that there are 4,614 "Teleservice Center Call Reps," id., at B-7, B-8, 11,124 "call-answering positions," id., at B-4, and 6,202 "active positions," which is also the total number of circuits. RFP amend. 6, at B-5, B-5A. The RFP also defines "call representative" in Addendum D-1, Glossary of Terms, at 2, in a manner that associates it with the 4,614 Teleservice Center Call Reps positions. Tr. at 395-96. Therefore, the most reasonable interpretation from the face of the solicitation would appear to be that the specification refers to 1,200 of the 4,614 positions. MCI's solution was structured so that [DELETED], and thus it would be compliant with that interpretation. See Tr. at 344-55 (technical evaluator's testimony on MCI's oral presentation); Intervenor's Comments on the Hearing, attach. 3. Again, we cannot find the agency acted unreasonably in finding MCI compliant with this requirement.⁸

We recommend that the agency reopen the competition, amend the solicitation as may be appropriate, request and evaluate revised proposals, and make an award decision consistent with the terms of the RFP and this decision. If a proposal other than that of MCI's is selected for award, the contract previously awarded to that firm should be terminated. We also recommend that the protester be reimbursed the

⁸ Nevertheless, it appears that this requirement was confusing and/or did not represent the agency's actual requirements. In this regard, the agency witnesses identify this as 1,200 of the 6,202 active positions or circuits. Tr. at 317-19. In fact, the contracting officer specifically stated that this was originally created as 1,200 of 12,000 circuits; when the RFP was amended to reflect a requirement of 6,202 circuits, the specification with the 1,200 figure was never changed. Tr. at 319. Furthermore, the testimony of the technical evaluator suggests that it should be 10 percent of the total call answering positions (i.e., 10 percent of 11,124). Tr. at 355. Since we sustain the protest and recommend reopening the competition, the agency should take this opportunity to review this and the other questioned specifications to ensure they clearly state the agency's actual requirements.

reasonable cost of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). The protester should submit its claim for costs, detailing and certifying the time expended and cost incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
Acting General Counsel